

Remarks

The Office Action rejects claims 62-75, 78-82, and 84-93 as being obvious under § 103(a) in view of US Patent 5,345,743 to Baier in view of US Patent 5,732,517 to Milikovsky. The Applicant respectfully traverses the rejections. The Applicant has cancelled some of the claims and entered two new claim sets directed to the patentable combination of features. The Applicant believes the new claims consolidate the issues. The Applicant also submits the dependent claims are independently patentable.

The Applicant respectfully submits the current rejection fails because the secondary reference does not disclose the features related to the insulating cavities recited in the claims. The Applicant respectfully traverses the interpretation of the Milikovsky reference because the Milikovsky reference does not disclose the items set forth in the Office Action. The Office Action concludes that Milikovsky

teaches a window unit (Fig. 2) having glass panes and a spacing elements (3) between glass panes (2 and 4); the spacing elements (3) defining a body (B), the body (B) defining a plurality of insulating cavities (C); wherein the cross section of body material (B) being larger than the cross sectional area of the insulating cavities (C); wherein the body (B) defining a longitudinal direction; and each of the insulating cavity (C) extending continuous in the longitudinal direction; the cavities (C) are spaced apart from one another; and wherein the cavity (C) has a width, the space between the cavities (C) being equal to or greater than the width of either cavity.

The Applicant respectfully submits this interpretation of Milikovsky is not supported by any material within the four corners of the Milikovsky document. Milikovsky discloses an insulating glazing unit and a pair of spacers. Milikovsky does not, however, disclose, teach, or suggest anything about the construction of the spacer body except that the spacer provides a hermetic seal for the glazing unit. Nothing in Milikovsky discloses (i) a plurality of insulating cavities, (ii) the relative cross sections of the different portions of the spacer, (iii) the continuity of what the Office Action refers to as insulating cavities in the longitudinal direction. The Applicant respectfully traverses the application of Milikovsky in this manner.

The Office Action submits that Milikovsky has an illustration that is "exactly the same as applicant's illustration of cavities and thus clearly constitute[s] cavities as readily apparent to any person having ordinary skill in the art." Page 4 of the Office Action dated December 31, 2007. The Applicant submits the conclusion set forth in the Office Action is entirely based on the teachings of Applicant's current specification because the conclusion entirely relies on Applicant's specification to interpret the Milikovsky reference. Such reasoning relies on hindsight because there is nothing in Milikovsky that explains what the illustration shows. This type of reasoning is impermissible in support of an obviousness rejection.

The Office Action also submits that one of ordinary skill in the art is presumed to know something apart from what is explicitly set forth by any particular patent document. The Office Action concludes that one of ordinary skill in the art must conclude that the unlabeled and unexplained Milikovsky illustrations teach the exact structure of the pending claims. The lack of disclosure in Milikovsky requires speculation to determine the structure of the illustration. The Applicant has included EXHIBIT A attached at the end of this amendment which shows an extruded seal having an internal anti-stretch cord. Such anti-stretch cords are have been added to flexible seals for years. This exemplary illustration depicts the anti-stretch cord exactly like Applicant depicts the insulating cavities in the pending application. The Applicant thus submits that one of ordinary skill in the art could conclude that the hermetically-sealing material of the Milikovsky spacers include anti-stretch cords to prevent the spacers from delaminating from the glass.

Nothing in Milikovsky discloses or teaches the use of cavities in the body of the spacer and certainly does not disclose or teach anything about the orientation of cavities within the spacer. The Applicant submits that an interpretation of unlabeled drawings and unexplained patent drawings cannot be used to properly support a rejection. MPEP § 2125 provides that drawings may be used as prior art only when the picture shows all of the claimed structural features and how they are put together. The drawings must be evaluated for what the drawings reasonably disclose and suggest to one of ordinary skill in the art. Id. Further, patent drawings are not provided in any scale that may be used to support a rejection. The present

claims specifically recite relative cross sectional areas and relative spacings as important features of the invention. No such relative sizes or cross sectional areas are disclosed in Milikovsky. The Milikovsky disclosure thus does not support the rejection.

In addition to the lack of disclosure in the Milikovsky reference, the Applicant submits the United States Patent and Trademark Office has made a ruling on the record of this application that states that the spacers, such as those shown in Milikovsky, and the presently-claimed muntin bar are independently patentable. There is thus no reason why one of ordinary skill in the art would combine the teachings of a spacer disclosure with a muntin disclosure. Spacers and muntin bars are independent and distinct elements in the insulating glass industry. In the Office Action dated June 2, 2004, in this patent application, the official position of the United States Patent and Trademark Office established that the muntin bar claims of the present application are patentably distinct from the spacer claims of the application. The Applicant notes that the official position of the United States Patent and Trademark Office is that muntins and spacers are independently patentable as set forth in the office action dated June 2, 2004, the pertinent portion reproduced below:

I. The inventions are distinct, each from the other because of the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21, 29, drawn to muntin bar element, classified in class 52, subclass 455.
- II. Claims 22-28, drawn to apparatus of a spacer, classified in class 52, subclass 786.13.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions used as spacer between glass panes.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

As described in the June 2, 2004, Office Action, the invention groups are "unrelated" and "have acquired a separate status in the art." Id. The office action specifically concludes that the groups (muntins and spacers) are "distinct." Id. MPEP § 802.01 states "Related inventions are distinct if the inventions as claimed are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art). (underlining added) The Applicant thus submits that the June 2, 2004, Office Action makes clear that muntin inventions are distinct from – and thus PATENTABLE over – spacer inventions. As such, the claimed muntin bar configurations are distinct from – and thus patentable over – the Milikovsky spacer disclosures. Further, the Applicant submits that one of ordinary skill in the art would not seek to combine features of unrelated inventions that have acquired a separate status in the art. One of ordinary skill in the art would thus not look to a spacer disclosure (Milikovsky) to modify the muntin disclosure of Baier.

In view of the forgoing, the Applicant submits the spacer teachings of Milikovsky cannot be properly combined with the muntin bar teachings of Baier

under §103(a). Spacers and muntin bars are independent and distinct inventions serving different purposes and functions in an insulating glass unit. The Applicant thus submits there is no suggestion or motivation in the references to combine the teachings. Further, there is nothing in the cited references that establishes a reasonable expectation of success. A *prima facie* case of obviousness thus cannot be established and the claims are thus patentable over the cited combination.

In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal Notice of Allowance for the claims.

Please call the undersigned attorney if any issues remain after this amendment.



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